Supreme Court, U. S.
FILED
JUN 18 1980
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
FALL TERM, 1979

NO. 79-1995

THE CITY OF LOS ANGELES,

Petitioner,

vs.

ADOLPH LYONS,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

BURT PINES
City Attorney of
Los Angeles
JOHN T. NEVILLE
Senior Assistant
City Attorney
S. THOMAS TODD
Deputy City
Attorney
1700 City Hall East
200 North Main Street
Los Angeles, CA 90012
(213) 485-3626

Counsel for Petitioner

IN THE
SUPREME COURT OF THE UNITED STATES
FALL TERM, 1979

NO.

THE CITY OF LOS ANGELES,

Petitioner,

vs.

ADOLPH LYONS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BURT PINES
City Attorney of
Los Angeles
JOHN T. NEVILLE
Senior Assistant
City Attorney
S. THOMAS TODD
Deputy City
Attorney
1700 City Hall East
200 North Main Street
Los Angeles, CA 90012
(213) 485-3626

Counsel for Petitioner

Petitioner, the City of Los Angeles, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit.

QUESTIONS PRESENTED

1. Does respondent's complaint state the requisite case or controversy between respondent and petitioner?

2. Does respondent's complaint state an adequate basis for equitable relief against a local governmental entity?1/

1/ The parties in the Court of Appeals were the same as the parties here. The caption of the case in the Court of Appeals lists Doe Crupi, Doe Hills, Doe Sandoval and Doe Lloyd as defendants-appellees; however, they were not involved in the issues presented to that court and are not involved in the issues presented to this Court.

CONTENTS

	Page
Opinion Below	3
Jurisdiction	3
Constitutional Provision Involved	3
Statement of the Case	5
Reasons for Granting the Writ	11
Conclusion	28
Appendix: Opinion of the United States Court of Appeals for the Ninth Circuit	

TABLE OF AUTHORITIES

	Page
Constitutional Provision	
U.S. Const. art. III, sec. 2	14
Cases Cited	
O'Shea v. Littleton (1974) 414 U.S. 488, 94 S.Ct. 669, 38 L.Ed.2d 674	11,12
Rizzo v. Goode (1976) 423 U.S. 362, 96 S.Ct. 598, 46 L.Ed.2d 561	10,15,20

. . . .

OPINION BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is reported at 615 F.2d 1243. A copy of the opinion is attached hereto as an appendix.

JURISDICTION

The judgment of the United States Court of Appeals for the Ninth Circuit was entered on March 28, 1980. This Court has jurisdiction pursuant to 28 U.S.C. section 1254, subdivision (1).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution article III, section 2, provides:

"The judicial Power shall

extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls; --to all Cases of admiralty and maritime Jurisdiction;-- to Controversies to which the United States shall be a Party;--to Controversies between two or more States;-- between a State and Citizens of another State;--between Citizens of different States;--between Citizens of the same State claiming Lands under Grants of different

States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects."

STATEMENT OF THE CASE

On February 7, 1977, respondent Adolph Lyons filed a complaint for damages, injunction and declaratory relief in the United States District Court for the Central District of California. The district court's jurisdiction was invoked pursuant to 28 U.S.C. sections 1331 and 1343. Respondent alleged that Los Angeles police officers Crupi, Hills, Sandoval and Lloyd, acting under color of state law and within the course and scope of their employment, stopped respondent for a traffic violation and without

provocation or justification applied a "bar arm" or "carotid artery" control hold around respondent's neck until he was rendered unconscious, thereby depriving him of specified constitutional rights and causing him to suffer damages in excess of $10,000.

Counts one through four of the complaint involve respondent's claim for damages. In count five, respondent sought an injunction prohibiting the City of Los Angeles and its officers, agents, representatives and employees from "authorizing, instructing, encouraging the use of or applying" the "bar arm" and "carotid artery" control holds "except in situations where the proposed victim of said control reasonably appears to be threatening the immediate use of deadly force." He alleged:

"18. The 'Bar Arm Control' is a means of either physical defense or offense which is applied by a right handed man as follows: You stand behind your victim. Place your right arm around his neck positioning your forearm directly in front of and against the victim's adams [sic] apple. Grasp your right fist with your left hand and pull backwards with your right forearm and left hand. This hold is designed to cut-off the victim's air supply and to render him unconscious.

"19. The 'Carotid Artery Control' is a means of either physical defense or offense

which is applied by a right handed man as follows: You stand behing [sic] your victim. Place your right arm around his neck positioning the inside of your right elbow directly in front of and against the victim's adam's apple. Grasp your right fist with your left hand, press your right fist inward towards the victim's neck and tighten and close your right arm. This hold is designed to cut-off the victim's blood supply to his brain and to render him unconscious.

"20. Defendant City of Los Angeles has in the past and now does authorize, train and

> encourage its police officers to employ so-called 'carotid artery' and 'bar arm' controls in situations where they are threatened by far less than deadly force."

In addition, respondent alleged that Los Angeles police officers "regularly and routinely apply these choke holds in innumerable situations where they are not threatened by the use of any deadly force whatsoever"; use of these holds "constitutes the use of deadly force and threatens the victim thereof with immediate severe bodily harm and death"; use of these holds within the previous five years had resulted in "severe and permanent injuries to numerous persons" and at least two deaths; and petitioner City, by "authorizing, instructing and encour-

aging the use of the foregoing holds, when less than deadly force is threatened," is threatening to deprive respondent and "others similarly situated" of specified constitutional rights, and to cause respondent and "others similarly situated" irreparable injury.

In count six, respondent sought a declaratory judgment that police use of the "bar arm" and "carotid artery" control holds on a person who is not threatening immediate use of deadly force is a violation of specified constitutional rights.

Petitioner filed its answer to the complaint on April 21, 1977, and promptly moved for partial judgment on the pleadings, citing this Court's decisions in Rizzo v. Goode (1976) 423 U.S. 362, 96 S.Ct. 598, 46 L.Ed.2d 561,

and O'Shea v. Littleton (1974) 414 U.S. 488, 94 S.Ct. 669, 38 L.Ed.2d 674. The motion was granted and judgment in favor of petitioner in regard to counts five and six was entered on May 19, 1977. Respondent appealed, and on March 28, 1980, the Court of Appeals reversed.

REASONS FOR GRANTING THE WRIT

This Court should grant a Writ of Certiorari because the Court of Appeals "has decided a federal question in a way in conflict with applicable decisions of this court." (U.S.Sup.Ct. Rule 19, subd. (1)(b).)

. . . .

. . . .

. . . .

. . . .

A.

Respondent's Complaint Does Not State the Requisite Case or Controversy Between Respondent and Petitioner.

In O'Shea v. Littleton (1974) 414 U.S. 488, 94 S.Ct. 669, 38 L.Ed.2d 674, 19 citizens of Cairo, Illinois sought injunctive relief against a local magistrate and circuit court judge who allegedly deprived members of the class these citizens represented of their constitutional rights while carrying out judicial duties. This Court reasoned:

> "Apparently, the proposition is that if respondents proceed to violate an unchallenged law and if they are charged, held to answer, and tried in any proceedings before petitioners, they will

be subjected to the discriminatory practices that petitioners are alleged to have followed. But it seems to us that attempting to anticipate whether and when these respondents will be charged with crime and will be made to appear before either petitioner takes us into the area of speculation and conjecture. . . . Accepting that [respondents] are deeply involved in a program to eliminate racial discrimination in Cairo and that tensions are high, we are nonetheless unable to conclude that the case-or-controversy requirement is satisfied by general asser-

> tions or inferences that in the course of their activities respondents will be prosecuted for violating valid criminal laws. We assume that respondents will conduct their activities within the law and so avoid prosecution and conviction as well as exposure to the challenged course of conduct said to be followed by petitioners." (414 U.S. at 497, 94 S.Ct. at 676-77, 38 L.Ed.2d at 684; emphasis in original.)

This Court held that the threat of injury from the alleged course of conduct attacked by respondents was too remote to satisfy the case-or-controversy requirement of Article III

of the Constitution.

In Rizzo v. Goode (1976) 423 U.S. 362, 96 S.Ct. 598, 46 L.Ed.2d 561, a class action seeking equitable relief against officials of the City of Philadelphia based on an allegedly pervasive pattern of police mistreatment of minority citizens in particular and all citizens in general, this Court held that the individual respondents lacked the requisite personal stake in the outcome to have a case or controversy within the meaning of Article III.

> "[T]he individual respondents' claim to 'real and immediate' injury rests not upon what the named petitioners might do to them in the future--such as set a bond on the basis of race--

but upon what one of a small, unnamed minority of policemen might do to them in the future because of that unknown policeman's perception of departmental disciplinary procedures. This hypothesis is even more attenuated than those allegations found insufficient in O'Shea to warrant invocation of federal jurisdiction." (423 U.S. at 372, 96 S.Ct. at 605, 46 L.Ed.2d at 570.)

The Court of Appeals in this case attempted to distinguish O'Shea and Rizzo, as follows:

"But in this case, the threat of future injury to not only Lyons, but to every citizen in the area is much more

immediate. To be subject to these strangleholds, a citizen need only be stopped for a minor traffic violation while driving an automobile, as shown by the alleged facts in this case. The use of these strangleholds is accepted police practice, even in non life-threatening situations. It is not farfetched to suggest that especially in a city like Los Angeles, where many motorists drive long distances daily, the chances of being stopped by a policeman for an alleged motor vehicle violation are fairly good. Certainly the odds of having that sort of encounter are much greater

> than the odds of having the sort of encounters described in O'Shea or in Rizzo, and therefore meet the constitutional requirements of 'case' or 'controversy.'" (615 F.2d at 1246-47.)

The attempt fails. The "odds" of encountering the police in Los Angeles is not the relevant consideration. While respondent alleges in his complaint that one of the control holds in question was used on him in the absence of resistance or threat on his part, he does not allege that this is the normal police practice. Instead, his claim for injunctive relief asserts that these control holds are used by police officers who "are not threatened by the use of any deadly force whatsoever" (emphasis added), not the

use of no force whatsoever. So it is the citizen who threatens an officer with the use of force, albeit not necessarily deadly force, who is allegedly subject to the holds, not every citizen who merely comes into contact with the police. This case is indistinguishable from O'Shea, where this Court "assume[d] that respondents will conduct their activities within the law and so avoid . . . exposure to the challenged course of conduct said to be followed by petitioners" (414 U.S. at 497, 94 S.Ct. at 677, 38 L.Ed.2d at 684). The threat of injury to respondent and "others similarly situated" is at least as remote as it was in O'Shea and does not satisfy the case-or-controversy requirement.

. . . .

. . . .

B.

Respondent's Complaint Does Not State an Adequate Basis for Equitable Relief Against a Local Governmental Entity.

In Rizzo v. Goode, supra, this Court held that the scope of federal equity power does not extend to ordering city officials to submit for the district court's approval a program for improving the handling of citizen complaints alleging police misconduct.

> "Where, as here, the exercise of authority by state officials is attacked, federal courts must be constantly mindful of the 'special delicacy of the adjustment to be preserved between federal equitable power and State administration of its own law.'

[Citation omitted.]

". . . When a plaintiff seeks to enjoin the activity of a government agency, even within a unitary court system, his case must contend with 'the well-established rule that the Government has traditionally been granted the widest latitude in the "dispatch of its own internal affairs," . . . ' [citation omitted]. The District Court's injunctive order here, significantly revising the internal procedures of the Philadelphia police department, was indisputably a sharp limitation on the department's 'latitude in the "dispatch of its own internal

affairs."'

"When the frame of reference moves from a unitary court system, governed by the principles just stated, to a system of federal courts representing the Nation, subsisting side by side with 50 state judicial, legislative, and executive branches, appropriate consideration must be given to principles of federalism in determining the availability and scope of equitable relief. [Citation omitted.]

" . . . .

"[E]ven where the prayer for injunctive relief does not seek to enjoin the state criminal proceedings them-

selves, we have held that the principles of equity nontheless militate heavily against the grant of an injunction except in the most extraordinary circumstances. . . .

"Thus the principles of federalism which play such an important role in governing the relationship between federal courts and state governments . . . have applicability where injunctive relief is sought . . . against those in charge of an executive branch of an agency of state or local governments such as respondents here. . . .

". . . When it injected

> itself by injunctive decree into the internal disciplinary affairs of this state agency, the District Court departed from these precepts." (423 U.S. at 378-80, 96 S.Ct. at 607-09, 46 L.Ed.2d at 573-75.)

The Court of Appeals attempted to distinguish Rizzo as involving "a massive federal structural decree," whereas this case involves only a "preventive decree." (615 F.2d at 1249.)

> "Because of the broad charges and the sweeping relief sought in . . . [Rizzo and O'Shea], the plaintiffs were asking the federal courts, in effect, to supervise the conduct of state officials

and institutions over a long period of time. . . .

"However in this case, the plaintiff seeks no such structural relief. He seeks merely to enjoin the use of an established police practice which he maintains violates a number of his constitutional freedoms and the freedoms of his fellow citizens. Unlike the situations in O'Shea and Rizzo, he does not seek to supervise the functioning of the police department." (615 F.2d at 1247, emphasis added.)

This effort to distinguish Rizzo also fails. The problems inherent in the enforcement of the injunction sought by respondent would be enormous.

The district court would be faced with the prospect of contempt hearings in each instance where the "bar arm" or "carotid artery" control hold is used, in order to determine if the requisite threat of the immediate use of deadly force existed. This is precisely the type of pervasive federal intrusion into the daily operations of a local police department which Rizzo eschews. In addition, to permit the district court to engage in an evaluation of the merits of these control holds is to open a Pandora's box of requests for federal court evaluation of each technique and tactic used by local police. This would fly in the face of principles of federalism. Respondent simply has not stated the "most extraordinary circumstances" (423 U.S. at 379, 96 S.Ct. at 608, 46 L.Ed.2d at

574) which must exist to permit a federal court to inject itself into the internal affairs of a state agency.

. . . .

. . . .

. . . .

. . . .

. . . .

. . . .

. . . .

. . . .

. . . .

. . . .

. . . .

. . . .

. . . .

. . . .

. . . .

. . . .

. . . .

CONCLUSION

Petitioner respectfully submits that the conflict between the decision of the Court of Appeals and applicable decisions of this Court is so clear that summary action is appropriate. Therefore, petitioner requests not only the granting of a Writ of Certiorari, but also simultaneous reversal of the decision of the Court of Appeals.

Dated: June 9, 1980.

Respectfully submitted,

BURT PINES,
City Attorney
JOHN T. NEVILLE,
Senior Assistant
City Attorney

By S. Thomas Todd
S. THOMAS TODD
Deputy City Attorney

Counsel for Petitioner
THE CITY OF LOS ANGELES

APPENDIX

APPENDIX

Adolph LYONS, Plaintiff-Appellant,

v.

CITY OF LOS ANGELES, Doe Crupi, Doe Hills, Doe Sandoval and Doe Lloyd, Defendants-Appellees.

No. 77-2591.

United States Court of Appeals, Ninth Circuit.

March 28, 1980.

Michael R. Mitchell, Los Angeles, Cal., for plaintiff-appellant.

Daniel U. Smith, Deputy City Atty.,

Los Angeles, Cal., for defendants-appellees.

Appeal from the United States District Court for the Central District of California.

Before TUTTLE,* TRASK and ANDERSON, Circuit Judges.

TUTTLE, Circuit Judge:

Appellant Adolph Lyons filed a seven-count civil rights complaint against the City of Los Angeles (City) and four of its police officers, alleging serious police misconduct. The district court granted partial judgment on the pleadings in favor of the City with respect to those counts seeking injunctive and declaratory relief (counts five, six and

* Honorable Elbert P. Tuttle, Senior United States Circuit Judge, United States Court of Appeals for the Fifth Circuit, sitting by designation.

seven.)[sic] Because we find that the district court misperceived the nature of the "case or controversy" and standing requirements in dismissing part of this case, we reverse the court's order as to counts five and six. We affirm the court's order as to count seven.

I.

The appellant alleges that four Los Angeles city police officers stopped his car because one of its taillights had burned out. He further alleges that without any provocation or reason to fear for their safety, the police officers applied strangleholds around his neck until he was rendered unconscious. Appellant asserts that the police department actively

encourages the use of these holds even in non-life-threatening situations, and that on several occasions such police strangleholds have resulted in severe permanent injuries or even death.

The appellant alleges numberous constitutional violations by the police under color of state law. He maintains that the strangleholds violated the first amendment (prior restraint on speech), the fourth amendment (unreasonable seizure of the person), the eighth amendment (cruel and unusual punishment), and the fourteenth amendment (due process). The first four counts of the complaint seek money damages, invoking 42 U.S.C. sections 1983, 1985, and 1986, and the theory that the City is vicariously liable for the actions of its employees. Counts 5 and 6 seek injunctive and declaratory

relief, respectively, to restrain the City from authorizing the use of the stranglehold controls except where the victim reasonably appears to be threatening the immediate use of deadly force.1/

Count seven requests a declaratory judgment concerning the constitutionality of a local ordinance creating an alleged conflict of interest within the office of the city attorney. Section 20.26 of the Los Angeles City Administrative Code assigns to the city

---

1/ We note that the appellant in no way asks for a complete prohibition on the use of the stranglehold. He only seeks to restrain its use to situations where it is constitutional. In what circumstances the use of the strangleholds is constitutional is, of course, a judgment for the district court to make. Our opinion deals only with the issue of whether or not Lyons has standing to assert his claims, and whether those claims meet the case or controversy requirements.

attorney the duty to prosecute misdemeanors committed within the city limits.2/ The city attorney, however, is also the official responsible for defending the city against civil liability for the acts of its employees. The appellant therefore argues that when a suspected misdemeanant is a city employee acting in the course of his employment, the city attorney cannot prosecute without violating his ethical duties of [sic] his client. Thus, section 20.26 effectively prevents the prosecution of city employees. Therefore, the argument continues, section 20.26 violates the equal protection clause by

---

2/ The state enabling law authorizes such prosecution if the district attorney consents. Cal.Gov.Code section 41803.5.

providing less protection for victims of misdemeanors committed by city employees, than for victims of misdemeanors committed by others. In count seven appellant alleges that the city attorney has neither investigated nor prosecuted the police officers responsible for the assault. He seeks a declaratory judgment that section 20.26 is unconstitutional.

The City moved for partial judgment on the pleadings with respect to counts five, six, and seven, and with respect to those portions of the vicarious liability count (count two) that related to appellant's first and eighth amendment claims. This appeal is from the order granting that

. . . .

. . . .

. . . .

motion.3/ Appellant apparently does not contest that part of the order relating to count two of the complaint. Thus, the only claims at issue here are those contained in counts five, six, and seven, against the City.

3/ Pursuant to 28 U.S.C. section 1291, the Courts of Appeals have jurisdiction over appeals from "final decisions" of the federal district courts. Partial disposition of a multiparty or multiclaim action does not constitute a final decision, absent "an express determination that there is no just reason for delay and upon an express direction for the entry of judgment." Fed.R.Civ.P. 54(b). See also Manhart v. City of Los Angeles, 553 F.2d 581 (9th Cir. 1978), rev'd on other grounds, 435 U.S. 702, 98 S.Ct. 1370, 55 L.Ed.2d 657 (1978); Huckeby v. Frozen Food Express, 555 F.2d 542 (5th Cir. 1977); Lane v. Graves, 518 F.2d 965 (8th Cir. 1975). In this case, however, the district court has made the required determination and direction.

II.

Count seven of the plaintiff's complaint requests a declaration that section 20.26 of the Los Angeles City Adminstrative Code, which delegates to the city attorney the authority to prosecute misdemeanors committed within city limits, violates equal protection by effectively barring prosecution of city employees for misdemeanors.

The City argues that Lyons lacks standing to assert that the failure of the city attorney to prosecute his assailants violated his constitutional rights. The City also argues, among other things, that the City is immune from suit regarding the performance of discretionary prosecutorial duties, and the relief sought constitutes an unwarranted interference with state

criminal proceedings.

We need not reach these contentions, however, because we find the appellant's argument moot. The city attorney has now announced an offical policy of referring to the district attorney those criminal cases in which the alleged misdemeanant is a city employee, and in which there is a reasonable basis for a civil suit against the city. Therefore, this part of the case is no longer justiciable. Cf. Hall v. Beals, 296 U.S. 45, 90 S.Ct. 200, 24 L.Ed.2d 214 (1969).4/ Therefore, we affirm the district court as to count seven, intimating no view as to the merits of the appellant's contentions.

4/ Unlike our reasoning in Part III of the opinion, we reject the contention that this case is not moot because -continued-

III.

However, we reach a different result as to counts five and six pertaining to the use of the stranglehold controls. Count five of the complaint seeks preliminary and permanent injunctions restraining the City from authorizing use of the stranglehold controls other than in life-threatening situations. Count six seeks a declaration that the use of such controls in non-life-threatening situations violates several provisions of the Constitution.

(4/ continued) "there is a possibility of a recurrence which would be within the terms of proper device." See Bator, Mishkin, Shapiro and Wechsler, Hart & Wechsler's The Federal Courts and the Federal System, 110 (1973). We find as to this count, that given the change in policy, there is not a strong possibility of a recurrence of the behavior of which the appellant complains.

The district court did not issue findings of fact or conclusions of law on these issues. We therefore assume that its judgment rested essentially upon the rationales set forth in the defendant's motion in support of partial summary judgment on the pleadings and its briefs in this Court.

The appellee relies chiefly on the reasoning of O'Shea v. Littleton, 414 U.S. 488, 94 S.Ct. 669, 38 L.Ed.2d 674 (1974) and Rizzo v. Goode, 423 U.S. 362, 96 S.Ct. 598, 46 L.Ed.2d 561 (1976) for the proposition that Lyons has not shown the possibility of "real and immediate future injury." It is true, as the appellee states, that O'Shea says that "[p]ast exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief . . . if

unaccompanied by any continuing, present adverse effects." 414 U.S. at 495-96, 94 S.Ct. at 676. This is an argument that the plaintiff's case or controversy is no longer active, but is moot or not ripe.5/

It seems the court below concluded, most likely on the basis of

---

5/ See 13 Wright, Miller & Cooper, Federal Practice and Procedure: Jursidiction, section 3531 at 231-32 (1975): "O'Shea v. Littleton blended standing with both ripeness and mootness concerns. . . . As will be seen, much of the law of ripeness and mootness can be viewed as simply a convenient way of expressing particular aspects of standing concerns." And at 89 Supp. (1979) (concerning Rizzo): "Recourse to Article III justiciability doctrine in this setting has strong connections with established mootness doctrines." See also Warth v. Seldin, 422 U.S. 490, 499, n.10, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975): "The standing question thus bears close affinity to questions of ripeness--whether the harm asserted has matured sufficiently to warrant judicial intervention--and of mootness--whether the occasion for judicial intervention persists."

O'Shea and Rizzo, that there was no standing because there was insufficient showing that the police were likely to do this to the plaintiff again. While this factor was discussed in both Rizzo and O'Shea, reliance on both those cases to support this contention is misplaced. O'Shea involved a suit alleging racial discrimination against a local judge and magistrate. To be affected by the alleged practices of these officers the court said that the plaintiffs would have to "proceed to violate an unchallenged law and if . . . charged, held to answer, and tried . . . before petitioners . . . [and then] subjected to the discriminatory practices . . . ." 414 U.S. at 497, 94 S.Ct. at 676. In Rizzo, a broad-based suit that sought primarily to protect minorities from

alleged police abuses, the Court found the plaintiff's claims even more speculative, since they were based "upon what one of a small, unnamed minority of policemen might do to them in the future because of that unknown policeman's perception of departmental disciplinary procedures." 423 U.S. at 372, 96 S.Ct. at 605.

But in this case, the threat of future injury to not only Lyons, but to every citizen in the area is much more immediate. To be subject to these strangleholds, a citizen need only be stopped for a minor traffic violation while driving an automobile, as shown by the alleged facts in this case. The use of these strangleholds is accepted police practice, even in non life-threatening situations. It is not farfetched to suggest that especially

in a city like Los Angeles, where many motorists drive long distances daily, the chances of being stopped by a policeman for an alleged motor vehicle violation are fairly good. Certainly the odds of having that sort of encounter are much greater than the odds of having the sort of encounters described in O'Shea or in Rizzo, and therefore meet the constitutional requirements of "case" or "controversy." Baker v. Carr, 369 U.S. 186, 204, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962); Massachusetts v. Mellon, 262 U.S. 447, 488, 43 S.Ct. 597, 601, 67 L.Ed. 1078 (1923). For that reason alone, we could hold that Lyons has standing to seek injunctive relief, even given the O'Shea and Rizzo standards that there be a showing that this plaintiff would be stopped again

and subjected to the practice.

But this case is distinguishable from both O'Shea and Rizzo case [sic] on broader and more significant grounds. The plaintiffs in O'Shea and Rizzo sought massive structural relief. In O'Shea the court's opinion characterized the relief sought as an "ongoing federal audit of state criminal proceedings." 414 U.S. at 500, 94 S.Ct. at 678. Because of the broad charges and the sweeping relief sought in both cases, the plaintiffs were asking the federal courts, in effect, to supervise the conduct of state officials and institutions over a long period of time. It was this role and this perceived intrusion into what were considered state matters which were at the heart of the court's reluctance to find that the "case" or

"controversy" requirements had been met. In this sense, the Court's opinion in O'Shea and Rizzo represented the evolution of the court's concerns about "our federalism" first noted in Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971).6/

However in this case, the plaintiff seeks no such structural relief. He seeks merely to enjoin the use of an established police practice

---

6/ See generally, Fiss, Dombrowski, 86 Yale LJ 1103 (1977), especially at 1153: "For the new majority committed to the 'Our Federalism' of Younger and to limitation of federal intervention in state court proceedings, the administrative injunction sought in O'Shea v. Littleton was a monstrosity: . . ." See also, Tribe, Constitutional Law 156, (1978), "O'Shea and Rizzo no doubt reflect a concern on the part of the Supreme Court that some limits be placed on the power of federal district courts to put into effect broad structural injunctions of the sort which have become more commonplace in recent years."

which he maintains violates a number of his constitutional freedoms and the freedoms of his fellow citizens. Unlike the situations in O'Shea and Rizzo, he does not seek to supervise the functioning of the police department. In Rizzo, the Supreme Court distinguised and implicitly approved a Fourth Circuit case in which an injunction against the police department was granted, Lankford v. Gelston, 364 F.2d 197 (4th Cir. 1966), on the grounds that in that case the Baltimore Police were "executing an 'evil practice that has long and notoriously persisted in the Police Department.'" 423 U.S. at 362, 373-74 n.8, 96 S.Ct. at 605 n.8. In Lankford, the Fourth Circuit was persuaded that an injunction should issue even though the complained-of practices had ceased.

364 F.2d at 202-04. The Supreme Court also distinguished Rizzo from Hague v. CIO, 307 U.S. 496, 59 S.Ct. 954, 83 L.Ed. 1423 (1939) and Allee v. Medrano, 416 U.S. 802, 94 S.Ct. 2191, 40 L.Ed.2d 566 (1974), two cases which permitted suits under 42 U.S.C. section 1983 against law enforcement authorities, on the grounds that the latter two cases involved a "persistent pattern" of police misconduct rather than a statistical pattern which showed a certain type of behavior. The charge in this case involves a sanctioned police practice and policy which is clearly closer to the "pattern" of police behavior in Hague and Allee than Rizzo.7/ And even though the Supreme

7/ "The infrequent invocation of the Hague remedy is at least partially explained by the fact deliberately

-continued-

Court in Rizzo analyzed this "practice and pattern" issue in terms of the showing needed to establish liability under section 1983, it relates directly to the Court's discussion of the standing or ripeness issue because both reflect the Court's preoccupation with the problems of granting massive structural relief.8/

(7/ continued) ordered violations of constitutional rights have not been the primary problem. Most frequently, unconstitutional searches, arrests, or other abuses of police authority cannot be traced as in Hague to direct instructions from high police officials." Note, The Federal Injunction as a Remedy for Unconstitutional Police Conduct, 78 Yale L.J. 143, 147 (1968). This case fits neatly into the Hague set of facts since the stranglehold was sanctioned police practice. Therefore, the issuance of an injunction is particularly appropriate.

8/ See Warth v. Seldin, 422 U.S. 490, 520 (1975) (Brennan, J., dissenting) for a similar analysis that a decision on standing was related to a judgment on the merits; see also, Wright, Miller -continued

It is clear that Lyons once had a live and active claim meeting all the Article III requirements even under O'Shea and Rizzo, if only for a period that lasted but a few seconds. That period could be described as the time between the moment he was stopped and the moment the stranglehold was applied, or even the split second between the moment the officer moved to grab him and the moment the stranglehold was applied. If under O'Shea and Rizzo Lyons no longer has a

---

(8/ continued) & Cooper, section 3531 at 89 Supp.

See also Note, Rizzo v. Goode: Federal Remedies for Police Misconduct, 62 Va.L.Rev. 1259, 1265 (1976): "The Court's conclusion that the plaintiffs had no case or controversy with Philadelphia police officials reflected the Court's view of the merits: high police officials do not 'cause' citizens 'to be subjected' to patterns of misconduct merely by acquiescing in them."

claim for injunctive relief, it is because that claim has now become moot and that controversy no longer exists.

But there are notable exceptions to the mootness rule which make Lyons' claim deserving of consideration in court.

There is a long-standing rule of equity that a case does not become moot as to the specific petitioner in a case, even if the complained-of conduct has ceased, "if there is a possibility of a recurrence which would be within the terms of a proper decree." See Bator, Mishkin, Shapiro and Wechsler, Hart & Wechsler's The Federal Courts and the Federal System 100 (1973). As stated in United States v. W.T. Grant Co., 345 U.S. 629, 73 S.Ct. 894, 97 L.Ed. 1303 (1953), an antitrust case in which the defendant had voluntarily

ceased the allegedly illegal conduct:

> Both sides agree to the abstract proposition that voluntary cessation of allegedly illegal conduct does not deprive the tribunal of power to hear and determine the case, i.e., does not make the case moot. . . . A controversy may remain to be settled in such circumstances . . .. The defendant is free to return to his old ways. This, together with a public interest in having the legality of the practices settled, militates against a mootness conclusion. . . . For to say that the case has become moot means that the

> defendant is entitled to a dismissal as a matter of right . . .. The courts have rightfully refused to grant defendants such a powerful weapon against public law enforcement. [Citations omitted.]

Id. at 632, 73 S.Ct. at 897. Cf. United States v. Trans-Missouri Freight Assn., 166 U.S. 290, 17 S.Ct. 540, 41 L.Ed. 1007 (1897); NLRB v. Raytheon Co., 398 U.S. 25, 90 S.Ct. 1547, 26 L.Ed.2d 21 (1970); Walling v. Helmerich & Payne, Inc. 323 U.S. 37, 65 S.Ct. 11, 89 L.Ed. 29 (1944).9/ Under this

9/ As stated in Walling, a case under the Fair Labor Standards Act in which an employer argued the case was moot because the complained-of practice had been discontinued:

-continued

standard, Lyons' claim is not moot and can be heard since there is a strong possibility of recurrence of this police tactic.10/

(9/ continued)

> We hold that the case is not moot under these circumstances. Despite respondent's voluntary cessation of the challenged conduct, a controversy between the parties over the legality of the split-day plan still remains. Voluntary discontinuance of an alleged illegal activity does not operate to remove a case from the ambit of judicial power. . . .Respondent has consistently urged the validity of the split-day plan and would presumably be free to resume the use of this illegal plan were not some effective restraint made. . . . (Citations omitted).

Id. at 43, 65 S.Ct. at 14-15. In this case there is even a stronger possiblity of recurrence since the police have not offered to discontinue the practice.

10/ As to the question of whether the -continued

Lyons' claim is also one that is "capable of repetition, yet evading review" and therefore should be heard. Southern Pacific Terminal Company v. Interstate Commerce Commission, 219 U.S. 498, 515, 31 S.Ct. 279, 283, 55 L.Ed. 310 (1911). If Lyons is denied standing to pursue his claim, it is doubtful that anyone will be able to challenge the use of the stranglehold because of the circumstances under which they occur. The Supreme Court has invoked this "capable of

(10/ continued) possibility of recurrence must affect that individual plaintiff, see Wright, Miller & Cooper, section 3533 at 285: "If a plaintiff who once had standing persists in wishing to litigate a question that was once ripe, willingness to litigate may well rest either upon a substantial fear of future effect or upon a strong desire to vindicate the public interest. Either motive should ensure adequate presentation of the issues."

repetition, yet evading review" doctrine to review claims, even if the future recurring controversy has been shown to have but a small chance of affecting the original plaintiff. Thus, candidates have been allowed to attack eligibility statutes under this doctrine after their case was mooted, even though there was little or no showing that these individuals might run for office again. Moore v. Ogilvie, 394 U.S. 814, 815-16, 89 S.Ct. 1493, 1494, 23 L.Ed.2d 1 (1969). In Roe v. Wade, 410 U.S. 113, 124-25, 93 S.Ct. 705, 712, 35 L.Ed.2d 147 (1973), there was little showing that the particular women challenging the statute would again become pregnant and desire an abortion. Cf., SEC v. Sloan, 436 U.S. 103, 109-10, 98 S.Ct. 1702, 1707, 56 L.Ed.2d 148 (1978). If the

plaintiffs in those cases met the Article III requirements because the type of claims they had brought were "capable of repetition, yet evading review," Lyons' claim should be allowed to proceed also.11/

11/ Some might read De Funis v. Odegaard, 416 U.S. 312, 94 S.Ct. 1704, 40 L.Ed.2d 164 (1974), the equal protection challenge to the University of Washington's "quota" system in admissions as authority for the proposition that the W.T. Grant or the "capable of repetition, yet evading review" doctrines do not apply to Lyons' case. In De Funis, the Court refused to apply the Grant line of decisions because "mootness in the present case depends not at all upon a 'voluntary cessation' of the admissions practices that were the subject of this litigation . . . [but upon] the simple fact that De Funis is now in the final quarter . . . of study . . . ." Id. at 318, 94 S.Ct. at 1707. The Court said the case was not "capable of repetition, yet evading review" because there was "no reason to suppose that a subsequent case attacking those procedures will not come with relative speed to this Court." Id. at 319, 94 S.Ct. at 1707.

-continued

The Supreme Court treated the plaintiffs in O'Shea and Rizzo differently, however. What distinguishes O'Shea and Rizzo from other cases is that both entailed requests for structural injunctions involving federal supervision of state institutions. It is is our reading of O'Shea and Rizzo that the Court applied stricter Article III standards of standing and mootness because of the type of relief the plaintiffs sought.

(11/ continued) But this case is clearly distinguishable from De Funis as to both doctrines. The Supreme Court was certainly correct that the issues De Funis raised would come before the Court again with relative speed since five years later, it decided Regents of the University of California v. Bakke, 438 U.S. 265, 98 S.Ct. 2733, 57 L.Ed.2d 750 (1978). In contrast, if Lyons is not allowed to raise his claim here because his case is moot, there is certainly no reason to think that anyone else will be able to attack these procedures "with

-continued

In other words, to trigger a massive federal structural decree involving a state institution, the high Article III standards of O'Shea and Rizzo must be met because of the Supreme Court's

(11/ continued) relative speed," since the mootness standards apparently established in the lower court will keep nearly all plaintiffs similarly situated out of court.

As to the relevance of the Grant line of cases, the Court in De Funis found Grant inapposite because the University of Washington has subsequently admitted De Funis and was permitting him "to complete the term for which he is now enrolled." Id. at 318, 94 S.Ct. at 1707. The case therefore was moot because by the time the Supreme Court heard the case, De Funis had received the relief he requested when he filed the suit. In contrast, in this case Lyons has not received the relief he sought when he filed suit. Given that distinguishing fact, we hold the Grant line of cases applicable and this case not moot since Lyons has a much stronger continuing "adverse legal interest" than De Funis had at the time the Supreme Court considered his case. See Aetna Life Ins. Co. v. Haworth, 300 U.S. 227, 240-41, 57 S.Ct. 461, 463-64, 81 L.Ed. 617 (1937).

"federalism" concerns. But for a preventive decree like this one, the more lenient Article III standards of standing or mootness in cases like W.T. Grant or Moore apply.12/

12/ In his casebook, Injunctions (1972), Professor Fiss identifies three types of injunctions. "A preventive injunction," he writes "tries to stop a discrete event or act. The other two types of injunctions--regulatory and structural--are differentiated from preventive injunctions in that they establish a long, continuing relationship between the parties and the individual. . . . [In the structural decree], [t]he Court attempts to use the injunction as a device for altering or reorganizing some institutional arrangment. . . ." Id. at 1.

In The Civil Rights Injunction (1978), Fiss further characterizes the structural injunction as: "entailing a relationship of long duration between the judge and the social institution. . . "

These considerations--the consumption of resources and even more the role transformation--render plausible the possibility of a right without a remedy--that the court will decline

-continued

This view is bolstered by other factors. Mr. Justice Story described "the unique office of the injunction as preventive justice: the injunction is an instrument designed to prevent a

---

(12/ continued) to issue a structural injunction even though that is by far the best remedy. . . ." Id. at 108-109.

Professor Fiss' comments on the utility of the structural injunction notwithstanding, what is clear in this case is that Lyons sought no structural relief. Therefore, these concerns about the role transformation of the courts, whether legitimate or not, which clearly played a role in the O'Shea and Rizzo cases are irrelevant here. See note 6.

As to the Supreme Court's attitude towards structural relief, perhaps Francis Bacon summed it up best four centuries ago in his Of Innovations: "And he that will not apply new Remedies, must expect New Evils: for Time is the greatest Innovatour . . .." cited in Note, Developments in the Law--Injunctions, 78 Harv.L.Rev. 994 (1965).

wrong from occurring in the future."13/ Story was speaking, of course, of the traditional preventive injunction; the notion of the structural injunction had not yet appeared in our jurisprudence.14/

To read Rizzo and O'Shea in the manner suggested by the appellees, and apparently adopted by the district court is to take notions of federalism applicable peculiarly to structural decrees and use them to negate the injunction's function as an instrument of preventive justice. For if the standing requirements of Rizzo and O'Shea are invoked in cases such as

13/ See Fiss, The Civil Rights Injunction, 9.

14/ In The Civil Rights Injunction, Professor Fiss traces the development of the structural injunction, tying its development to the civil rights era.

this one, it is difficult to see how anyone can ever challenge police or similar administrative practices, since usually no one can know definitely if he is going to be subject to police scrutiny in the future. We cannot believe the Supreme Court in Rizzo and O'Shea meant to make it nearly impossible to challenge unconstitutional police practices. To do so would be to grant defendants the "powerful weapon against public law enforcement" which the Court rejected in W.T. Grant and other cases. That can only encourage a disrespect for both the law and the police who enforce that law. For as Mr. Justice Brandeis once wrote:

> In a government of laws, existence of the government will be imperiled if it fails

> to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy.

Olmstead v. United States, 277 U.S. 438, 485, 48 S.Ct. 564, 575, 72 L.Ed. 944 (1928) (Brandeis J., dissenting).

The strangleholds challenged here may be illegal or they may not be. But as long as we refuse to allow anyone to attack their constitutionality here, we

tell the citizen that there is no guardian of his constitutional rights. That is a principle that has no foundation either in the Constitution or in our beliefs about what a government ought to be. For that reason, we REVERSE and REMAND to the district court as to counts five and six for proceedings not inconsistent with this opinion.

DISTRIBUTED
SEP 2 1980

RECEIVED
SEP 2 1980
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

FALL TERM 1980

NO. 79-1995

THE CITY OF LOS ANGELES,

Petitioner,

vs.

ADOLPH LYONS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT
OF APPEALS FOR THE NINTH CIRCUIT

RESPONDENT'S MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS; AFFIDAVIT OF ADOLPH LYONS

MICHAEL R. MITCHELL
5850 Canoga Avenue
Fourth Floor
Woodland Hills, CA 91367
(213) 992-1203

Attorney for Respondent
Adolph Lyons

MOTION FOR LEAVE

TO PROCEED IN FORMA PAUPERIS

Respondent ADOLPH LYONS hereby moves the Court for leave to proceed in forma pauperis, without prepayment of fees and costs or security therefore, as shown by his affidavit appended hereto.

MICHAEL R. MITCHELL
5850 Canoga Avenue, 4th Fl.
Woodland Hills, CA 91367
(213) 992-1203

Attorney for Respondent

IN THE SUPREME COURT OF THE UNITED STATES

FALL TERM, 1980

NO. 79-1995

CITY OF LOS ANGELES,	)
Petitioner,	)
vs.	)
ADOLPH LYONS,	)
Respondent.	)

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS

I, ADOLPH LYONS, being first duly sworn, depose and say that I am the respondent in the above-entitled case; that in support of my motion to proceed without being required to pre-pay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present are that the petition for writ is untimely and should not otherwise be granted; and that if the writ is granted, the judgment of the Court of Appeals for the Ninth Circuit should be affirmed. I believe I am entitled to such rulings.

I have not sought leave to proceed in forma pauperis in any court below.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

QUESTION NO. 1:

Are you presently employed?

A. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

ANSWER TO NO. 1:

Yes.

A. $1518 gross per month; Fairview State Hospital, 2501 Harbor Boulevard, Costa Mesa, CA 92626.

QUESTION NO. 2:

Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source?

ANSWER TO NO. 2:

No.

QUESTION NO. 3:

Do you own any cash or checking or savings account?

A. If the answer is yes, state the total value of the items owned.

ANSWER TO NO. 3:

Yes.

A. Checking account averages about $600.00.

QUESTION NO. 4:

Do you own any real estate?

A. If the answer is yes, describe the property and state its approximate value.

ANSWER TO NO. 4:

Yes.

A. 1/7 remainder-man interest in farm land in Louisiana after mother's death whereupon my interest would be about $1700.

QUESTION NO. 5:

List the persons who are dependent upon you for support and state your relationship to those persons.

ANSWER TO NO. 5:

Yes; son, Jason Adolph Lyons, age 10.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Adolph M. Lyons
ADOLPH LYONS

SUBSCRIBED AND SWORN TO
before me this 27th day of
August, 1980.

Laqueta R Alexander
Notary Public for California

OFFICIAL SEAL
LAQUETA R. ALEXANDER
NOTARY PUBLIC — CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY
My Commission Expires May 24, 1981

Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefor.

JUSTICE

IN THE

SUPREME COURT OF THE UNITED STATES

FALL TERM 1980

NO. 79-1995

THE CITY OF LOS ANGELES,

Petitioner,

vs.

ADOLPH LYONS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT
OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

MICHAEL R. MITCHELL
5850 Canoga Avenue
Fourth Floor
Woodland Hills, CA 91367
(213) 992-1203

Attorney for Respondent
Adolph Lyons

19

Respondent ADOLPH LYONS prays that the Court:

A. deny the petition for writ of certiorari or, alternatively,

B. summarily affirm the judgment of the United States Court of Appeals for the Ninth Circuit.

QUESTIONS PRESENTED FOR REVIEW

Petitioner's presentation is satisfactory.

PARTIES

Petitioner's presentation is satisfactory.

CONTENTS

	Page
Opinion Below	4
Jurisdiction	4
Constitutional Provisions and Statutes Involved	4
Statement of the Case	4
Summary of Argument	5
Argument	5
A. The Petition is Premature	5
B. The Court of Appeals Has Not Decided a Federal Question in Conflict With Applicable Decisions of This Court	7
(1) An Article III, §2 Case or Controversy Exists in This Case	7
(2) Lyons is Entitled to Federal Equitable Relief Which Would Not Invoke Supervising the Police Department	9

TABLE OF AUTHORITIES

	Page
U.S. Constitution, Article III, §2	4,7
Cal. Code of Civil Procedure § 3548	10
Cal. Evidence Code § 664	10
Cal. Penal Code § 2652.5	9
FRCP 54(b)	5
42 U.S.C. § 1983	4

Cases

O'Shea v. Littleton (1974) 414 U.S. 488, 94 S.Ct. 669 38 L.Ed. 2d 674	7,9
People v. Sanders (1969) 268 C.A. 2d 802 74 Cal.Rptr. 350	8
Rizzo v. Goode (1976) 423 U.S. 362, 96 S.Ct. 598 46 L.Ed. 2d 561	7,8,9

OPINION BELOW

Petitioner's presentation is satisfactory.

JURISDICTION

Petitioner's presentation is satisfactory.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U.S. Constitution, Article III, §2 which provides, in relevant part:

> The Judicial Power shall extend to all cases, in Law and Equity, arising under this Constitution [and] the Laws of the United States...

42 U.S.C. § 1983 which provides, in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State... subjects or causes to be subjected any... person ... to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress.

STATEMENT OF THE CASE

Petitioner's statement of the case is satisfactory, except insofar as it fails to (and could not) reflect plaintiff's motion to the District Court to amend his complaint, which motion is set for hearing September 15, 1980. Plaintiff has just discovered that at least 14 persons have been killed in

Los Angeles County in the past five years by use of a stranglehold; ten of these persons were strangled by Los Angeles officers. (See Exhibit A hereto). Eighty percent (80%) of those killed by Los Angeles officers were black males who comprise only nine percent (9%) of the City's population. Plaintiff, a black male, seeks to add allegations of discrimination against black males denying them equal protection of the law and due process.

Petitioner sought a stay from this Court of the District Court proceedings, including the hearing on preliminary injunction now set for September 22, 1980. Mr. Justice Rehnquist denied the motion to stay July 22, 1980.

SUMMARY OF ARGUMENT

The petition is premature because it seeks review of a decision on interlocutory appeal at the pleading stage. There have been no evidentiary hearings; the record is bare. The case may settle or petitioner may prevail below. In any event, the Court of Appeals has not decided any federal question in conflict with any decision of this Court; respondent is seeking carefully narrowed equitable relief to stop needless police stranglehold deaths.

ARGUMENT

A. THE PETITION IS PREMATURE

The City seeks Supreme Court review of the Ninth Circuit's decision on an interlocutory appeal of the District Court's dismissal of two (2) counts of Lyons' complaint. The District Court expressly determined, pursuant to FRCP 54(b), that there

was no just reason for delay, expressly directed entry of judgment, and stayed proceedings pending the appellate decision. To date, there have been no evidentiary hearings and only minimal discovery. Extensive expert deposition discovery is being undertaken in anticipation of the hearing on plaintiff's motion for preliminary injunction now set for September 22, 1980. The parties anticipate consolidating with this hearing the declaratory relief and permanent injunction hearings.

The record now is devoid of testimony by any party or any expert. This Court should allow Lyons to present evidence at the hearing, which will show that officers of Los Angeles have killed at least ten persons since 1975 with these strangleholds, including at least three in the first six months of 1980, and that the overwhelming view of medical and martial arts experts is that the strangleholds are likely to result in death.

With the presentation of this evidence, the case may settle. If not, the parties may accept the judgment of the District Court, or, if any party appeals, the Ninth Circuit will have an opportunity, for the first time, to cull the evidence and consider the case anew. In any event, the case would then reach this Court, if at all, with a complete evidentiary record. It would now be a waste of the Court's time to issue the Writ when, if the parties wish, the Court may have the opportunity to do so in the future on a full record.

B. THE COURT OF APPEALS HAS NOT DECIDED A FEDERAL QUESTION IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT

(1) AN ARTICLE III, §2 CASE OR CONTROVERSY EXISTS IN THIS CASE

Petitioner claims that the instant decision conflicts with O'Shea v. Littleton (1974) 414 U.S. 488, 94 S.Ct. 669, 38 L.Ed. 2d 674 and Rizzo v. Goode (1976) 423 U.S. 362, 96 S.Ct. 598, 46 L.Ed. 2d 561. This claim is incorrect.

In O'Shea, this Court held that the case-or-controversy requirement of Article III was not satisfied when persons complained that if they violated a law, if they were charged, if they were held to answer and if they were tried, they might be subjected to discriminatory practices by local judges.

The instant case is clearly distinguishable. Here plaintiff, a young black male, claims he was stopped by Los Angeles police officers because one of the taillights on his car was burned out--whereupon, without any provocation or reason to fear for their safety, police officers strangled him unconscious. Plaintiff claims that the police department actively trains and encourages use of these strangleholds in non-life-threatening situations and that severe permanent injuries and ten deaths have resulted. Lyons is not seeking to work his way through a five-fold process, as plaintiffs did in O'Shea. He is pleading that as soon as you get stopped by Los Angeles police--even for a burned out taillight--you may be strangled to death, as a matter of unconstitutional, ignorant policy.

As the Court of Appeals noted, "the odds of having that sort of encounter are much greater than the odds of having the sort of encounters described in O'Shea or in Rizzo, and there-

fore meet the constitutional requirements of 'case' or 'controversy,'" giving Lyons standing to seek injunctive and declaratory relief. Moreover the Court of Appeals found that there were independent reasons for granting Lyons relief because he is seeking very narrow relief: a declaration that the strangleholds constitute the use of deadly force and/or an injunction against use of strangleholds, not in every instance, but only absent the threat of deadly force. He is not seeking any massive structural relief such as was sought in Rizzo.

In Rizzo, supra, plaintiffs sought massive structural relief enjoining misconduct by a "small unnamed minority" of policemen who might do something to them in the future because of that unknown officer's perception of departmental disciplinary procedures." 423 U.S. at 372, 96 S.Ct. at 605. Lyons seeks carefully limited preventative relief (rather than structural relief) from departmentally authorized conduct (rather than misconduct) by all Los Angeles police officers who strangle a hugely disproportionate percentage of black males to death because of the officers' correct perception of departmental policy about when strangleholds can be applied. But the official policy is totally wrong. It is promulgated without consideration of the extensive expert opinion that the strangleholds constitute deadly force.

There is even support for this proposition in California case law. People v. Sanders (1969) 268 C.A. 2d 802, 805, n.1, 74 Cal.Rptr. 350, where the court stated:

> In the San Francisco Public Library we find a work (Bruce Tegner (1961), Judo for Fun, pp. 20-21--Library of Congress Catalog Number 61-16761) wherein it is stated: "Chokes must not be attempted by any Judo player unless there is

a Black Belt instructor present who is trained in the art of resuscitation (Kappo or Katsu). It is foolish and dangerous to attempt choking techniques without this safety precaution. Although there are some instructors who, unfortunately allow it, chokes against the windpipe should not be practiced. Chokes against the windpipe can be fatal. If at any time a windpipe choke is applied to you--you must submit immediately and refuse to practice with anyone who applies chokes of this nature. [¶] It requires more skill to apply Judo chokes properly, against the carotid artery. You must not apply even a legal choke without the presence of a Black Belt Instructor. The legal choke against the carotid artery can cause unconsciousness and there is danger of serious permanent injury or even fatality if the unconscious person is not revived within a matter of minutes."

See also Cal. Penal Code §2652.5 (misdemeanor for jail personnel to place "any chain or other mechanical restraint around the neck of any prisoner for any purpose").

(2) LYONS IS ENTITLED TO FEDERAL EQUITABLE RELIEF WHICH WOULD NOT INVOLVE SUPERVISING THE POLICE DEPARTMENT

Neither O'Shea nor Rizzo involved the threat of death to any person. But the strangleholds regularly used by Los Angeles officers do kill; they constitute deadly force.

The City argues that the "district court would be faced with the prospect of contempt hearings in each instance where

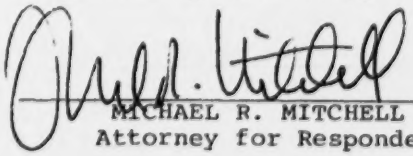
the 'bar arm' or 'carotid artery' control hold is used, in order to determine if the requisite threat of the immediate use of deadly force existed." Petition at 26. This argument presumes the incredible: that Los Aneles officers would disobey the law. It is presumed that official duty will be regularly performed and that the law will be obeyed. Cal. Evidence Code §664; Cal. Code of Civil Procedure §3548.

If the District Court grants injunctive relief, no serious problems would result. Presumably, Los Angeles would amend its policy to reflect (and advise its officers) accordingly that the strangleholds are deadly and must not be used unless deadly force is called for. Presumably, the officers would obey the law, follow the new policy and would stop ignorantly and needlessly killing citizens. No "supervision" of the Los Angeles Police Department is called for. The City is free to fashion and implement whatever policy it wishes to advise and properly instruct its officers.

If the Court grants declaratory relief, the same result should occur.

For the foregoing reasons, Respondent ADOLPH LYONS requests that the petition for certiorari be denied.

Respectfully submitted,



MICHAEL R. MITCHELL
Attorney for Respondent

LOS ANGELES COUNTY STRANGLEHOLD DEATHS

1975-1980

A. BY LOS ANGELES OFFICERS

1. Victim CARL MICHAEL MIDDLETON (LA Coroner's Case No. 75-6505) Black male, aged 25 to 30 years old, died May 27, 1975, after being "choked out" by Los Angeles police officers during arrest. Cause of death: Asphyxiation due to manual compression of the neck.
2. Victim FRANK FAIRBANKS (LA Coroner's Case No. 75-9571) Caucasian male, aged 21, died August 10, 1975, after application of Bar Arm Control by Los Angeles police officer. Cause of death: Acute cardio-respiratory arrest due to compression of the neck. (Negative drugs).
3. Victim BOOKER T. FORD, JR. (LA Coroner's Case No. 75-13320) Black male, aged 28 years old, died November 4, 1975 after Los Angeles police officer Robert Hyde applied a stranglehold. Cause of death: acute cardio-respiratory arrest due to compression of the neck.
4. Victim EDWARD DAILY (LA Coroner's Case No. 76-12099) Black male, aged 19, died October 6, 1976 after "cardio-respiratory arrest in back of police car." Cause of death: Asphyxiation due to neck restraint procedure for abnormal behavior associated with phencyclidine use.
5. Victim ALVIN WHITEHEAD (LA Coroner's Case No. 78-1594) Black male, aged 34, died February 1, 1978 after Los Angeles police officers twice applied bar arm control. Cause of death: Fracture, cervical spine with crush injury of spinal cord. Mode of death: homicide.
6. Victim DAVID RANDALL ADKINS (LA Coroner's Case No. 78-9095) Black male, aged 39, died July 24, 1978 after application of "choke hold" by Los Angeles police officers. Cause of death: Asphyxia due to neck compression during restraining procedures.

7. Victim CHADWICK TURK (LA Coroner's Case No. 79-10933) Black male, aged 30, died September 1, 1979 after "choke hold" applied by Los Angeles International Airport Security Officers. Cause of death: Acute cardio-respiratory arrest during restraining procedures for acute psychosis with agitation. Severe neck injuries noted.

8. Victim ROBERT CAMERON (LA Coroner's Case No. 80-360) Caucasian male, aged 32, died January 7, 1980 after application of choke hold by Los Angeles police officers. Cause of death: Hypoxic Encephalopathy (lack of oxygen to brain) due to respiratory arrest following application of a "choke hold" by police officers while in state of acute ethanol and cocaine intoxication (but Coroner's toxicological analysis is completely negative for ethanol, cocaine and all other drugs).

9. Victim JAMES WRIGHT (LA Coroner's Case No. 80-3230) Black male, aged 41, died March 7, 1980 after application of bar arm control by off-duty Los Angeles police officer. Cause of death: Acute cardio-respiratory arrest due to carotid control hold of neck (fracture of thyroid).

10. Victim LARRY MORRIS (LA Coroner's Case No. 80-7810) Black male, aged 29 years, died June 17, 1980 after Los Angeles police officers "unsuccessfully attempted to apply a carotid control hold." Autopsy report pending.

B. BY OTHER THAN LOS ANGELES OFFICERS

11. Victim RUDY RAUL GARCIA (LA Coroner' Case No. 77-7065) Caucasian male, 22 years old, died June 12, 1977 after being brought to the ground with a "bar hold" by two Pomona, CA police officers. Cause of death: neck compression during arrest procedure.

12. Victim ANTHONY BROWN (LA Coroner's Case No. 78-7428) Black male, aged 23, died June 13, 1978, after choke hold applied by Sears Roebuck security officer. Cause of death: Asphyxia due to compression of neck during restraining procedure.

13. Victim HAROLD T. HARRIS (LA Coroner's Case No. 78-11076) Black male, aged 23, died September 7, 1978 after being arrested and restrained by Compton, CA police officers. Cause of death: Asphyxia during restraining procedure for acute psychosis of phencyclidine intoxication.

14. Victim WILLIAM L. PRIETO (LA Coroner's Case No. 80-4227) Caucasian male, aged 53, died March 31, 1980 by a choke hold during arrest by a citizen. Cause of death: Compression and fracture of spine, as a consequence of a "neck control hold."

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF

I, the undersigned, say (check applicable paragraph):

☐ I am a party to this action. I have read the foregoing document and know its contents. The matters stated in it are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am an officer a partner_____ of _____, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I have read the foregoing document and know its contents. I am informed and believe and on that ground allege that the matters stated in it are true.

☐ I am one of the attorneys for _____, a party to this action. Such party is absent from the county of aforesaid where such attorneys have their office, and I make this verification for and on behalf of that party for that reason. I have read the foregoing document and know its contents. I am informed and believe and on that ground allege that the matters stated in it are true.

Executed on _____, 19____, at _____, California.

I declare under penalty of perjury that the above is true and correct.

_____
(Signature)

Subscribed and sworn to before me this _____ day of _____, 19____.

Notary Public in and for said County and State

ACKNOWLEDGMENT OF RECEIPT

Received copy of the within document on _____, 19____.

_____
(Signature)

PROOF OF SERVICE BY MAIL

I am a resident of the county aforesaid; I am over the age of 18 and not a party to the within action; my business address is:
5850 Canoga Avenue, 4th Floor, Woodland Hills, CA 91367

On August 28, 1980, I served the within document on the parties in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Woodland Hills addressed as follows:

Lewis N. Unger
Deputy City Attorney
1800 City Hall East
200 N. Main Street
Los Angeles, CA 90012

Executed on August 28, 1980 at Woodland Hills, California.

(check applicable paragraph below)

☐ (State) I declare under penalty of perjury that the above is true and correct.

☒ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Laquetz R Alexander
(Signature)

LAQUETZ R. ALEXANDER